IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE P.N.RAVINDRAN

FRIDAY, THE 14TH DECEMBER 2007 / 23RD AGRAHAYANA 1929

W.A.No.2956 of 2007

AGAINST THE JUDGEMENT IN W.P.(C).No.32759/2007 DATED 14/11/2007

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APPELLANT/PETITIONER:-

HEMA ANTONY,
W/O.SIMON VAZ,
AGED 40 YEARS,
VAIKATHUKARAN HOUSE,
EXCHANGE ROAD,
ALAPUZHA,
NOW RESIDING AT MANGATTU HOUSE,
MOHAN NIVAS,
OCHANTHURUTHU P.O., VYPIN.

BY ADV. SRI.C.A.CHACKO
SMT.C.M.CHARISMA
SRI.N.A.SHAFEEK

RESPONDENT/RESPONDENT:-

VIJAYA BANK,
WELLINGTON ISLAND BRANCH,
NEAR AYYAPPA TEMPLE,
NAVAL ROAD,
KOCHI-682 003,
REP. BY ITS CHIEF MANAGER,
VIJAYA BANK REGIONAL OFFICE,
M.G.ROAD,
ERNAKULAM.

BY ADV.SRI.K.ANAND.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 14/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.Dattu,C.J. & P.N.Ravindran,J.

W.A.No.2956 of 2007

Dated, this the 14th day of December, 2007

JUDGMENT

H.L.Dattu,C.J.

This is the third round of litigation by the petitioner. In the first writ petition filed, petitioner had called in question the initiation of proceedings by the respondent-Bank to recover the amounts due from the petitioner. The writ petition came to be dismissed by this Court. The petitioner, not being satisfied with the dismissal of the writ petition, was before this Court in W.A.No.1359 of 2007. Even that appeal came to be rejected.

(2) After rejection of the said Writ Appeal, the petitioner has filed yet another writ petition for a direction to permit the petitioner to pay the balance amount due in terms of his agreement with the Bank.

(3) The learned Single Judge while rejecting the writ petition, has observed that, the request for payment of balance amount in terms of the agreement ought to have been raised in the earlier round of litigation and the petitioner cannot ventilate her grievances in piecemeal. Further, taking into consideration the fervent plea made by the petitioner's learned counsel, the learned Single Judge has thought it fit to permit the petitioner to pay 50% of the amounts due to the Bank within one month and the balance of amount in four equal monthly instalments. Aggrieved by the said order passed by the learned Single Judge, the petitioner in the writ petition is before is before us in this appeal.

(4) The learned counsel appearing for the appellant/petitioner reiterates the contentions canvassed before the learned Single Judge. At the outset we would say that, we are not impressed with the submissions made by the learned counsel.

(5) As we have already noticed, this is the third round of litigation by the appellant. The object and purpose of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("Act" for short), is now explained by the apex Court in *Mardia Chemicals Ltd.* v. *Union of India* [(2004) 4 SCC 311]. The apex Court has also upheld the vires of the Act. The respondent-Bank, in order to recover the amounts due from the defaulters, is now entitled to issue appropriate notices under Section 13(2) of the Act to recover the loan amounts from the defaulters. If for any reason any person is aggrieved by the said notices, can question the same before the Debts Recovery Tribunal.

(6) In spite of all these, the learned Single Judge, taking a very sympathetic view of the matter, has granted certain instalment facility to the appellant to pay up the amounts due to the Bank. In our view, the learned Single Judge has granted more relief than what was sought for by the appellant. Therefore, in our opinion, the learned Single Judge has not committed any error whatsoever, which would call for our interference in appeal. Accordingly, the appeal requires to be rejected and it is rejected.

(7) The appellant is permitted to pay 50% of the amounts due to the Bank, as directed by the learned Single Judge, on or before 15.01.2008 and the remaining four instalments shall be paid by the appellant starting from 1.3.2008.

Ordered accordingly.

H.L.Dattu
Chief Justice

P.N.Ravindran
Judge

vku/-